

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Lynne Winner and Destiny Jennings, *on their own behalf and on behalf of all others similarly situated,*

Civil Action No. 2:16-cv-01541-JP

Plaintiffs,

v.

Kohl's Department Stores, Inc.,

Defendant.

STIPULATION OF FACT

Plaintiffs, Lynne Winner and Destiny Jennings, and Defendant Kohl's Department Stores, Inc. ("Kohl's"), stipulate to the following facts ahead of the Evidentiary Hearing And Argument set for March 3, 2017, without admitting or conceding that any such facts are properly considered on the pending motions:

1. On Oct. 24, 2014, at 2:05 PM, Kohl's received an incoming text message, containing the word "APP," from Ms. Winner's mobile phone number.
2. Kohl's had advertised to consumers the ability to earn frequent-shopper "points" by downloading Kohl's mobile application and requested that consumers text the word "APP" to Kohl's to receive instructions as to how to download the mobile application.
3. The following is a sample advertisement from Kohl's that asked consumers to text the word "APP" to Kohl's to receive these instructions:

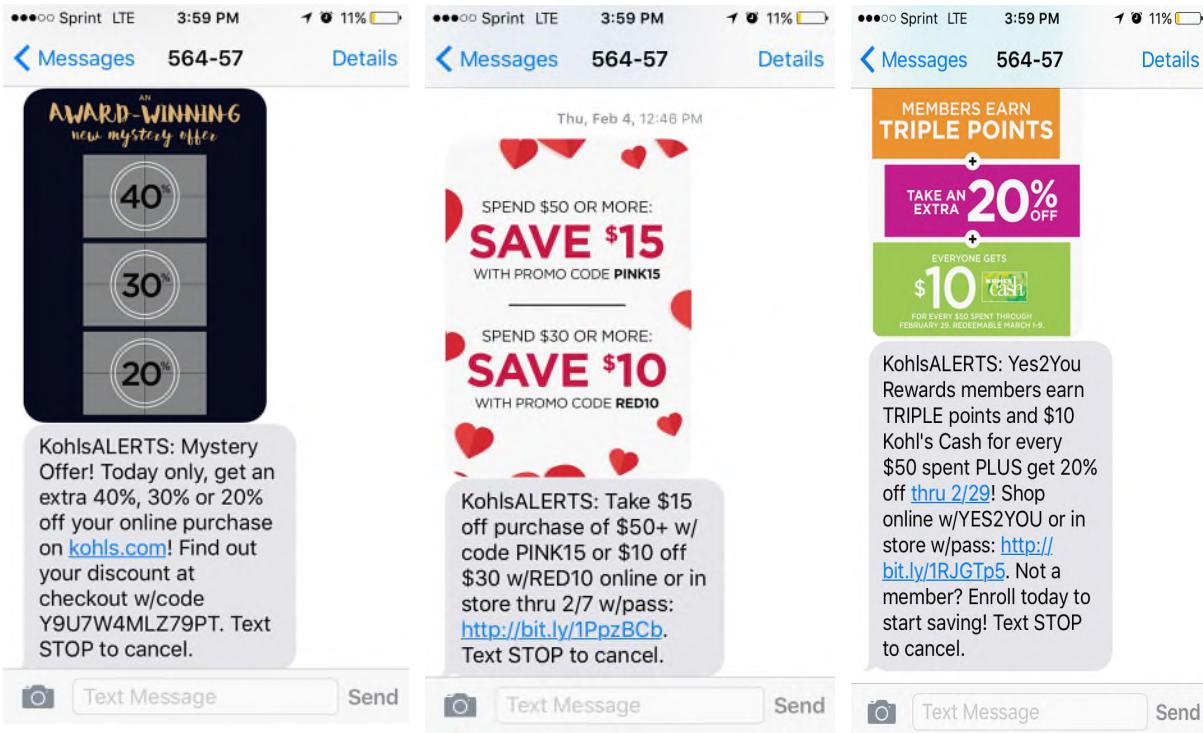


4. In response to the “APP” message from Ms. Winner’s phone, within 15 minutes of receipt of that message, Kohl’s transmitted two text messages to Ms. Winner’s phone number, stating as follows:

KOHL'S: Thanks for texting! To enroll in Yes2You Rewards click the link download the Kohl's App then sign in or create an account.
<http://bit.ly/1CXVMLK>

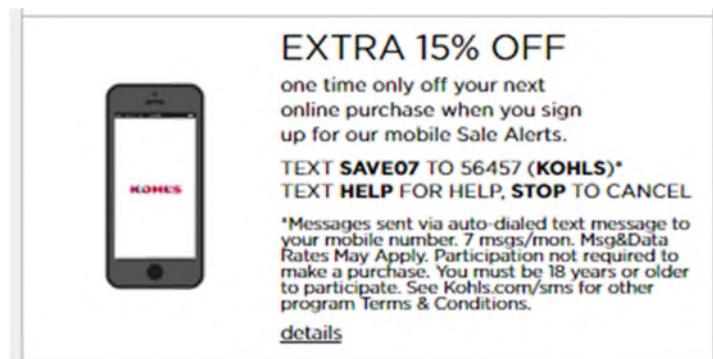
KohlsALERTS: Get more savings sent straight to your phone! Text SAVE30 to opt in to our Mobile Sale Alerts. Receive 5-7 msgs/mon. Msg&Data Rates May Apply.

5. Shortly after Kohl’s sent the second message, Kohl’s received from Ms. Winner’s phone a text message reading “SAVE30.”
6. After receiving that “SAVE30” message, Kohl’s commenced sending text messages to Ms. Winner’s phone at the rate of five to seven messages per month.
7. The messages sent to and received by Ms. Winner appeared as follows:



8. On at least one occasion, Ms. Winner redeemed a sales offer transmitted to her by text message, receiving \$10 off of a \$25 purchase on or about November 9, 2014.
9. Ms. Winner contends that she had repeatedly requested that Kohl's stop sending messages to her, but her requests went unheeded.
10. On March 24, 2016, Kohl's received from Ms. Winner's phone a text message reading "STOP." Kohl's has no record of any other request allegedly made by Ms. Winner for Kohl's to stop sending text messages to her phone number.
11. Within minutes of receiving that message, Kohl's sent Ms. Winner's phone a final text message confirming that she had unsubscribed from the text message program.
12. Kohl's has sent Ms. Winner's phone no text messages since March 24, 2016.
13. Ms. Winner contends that she was annoyed at receiving the messages and considered them spam.

14. On November 22, 2014, at 11:49 AM, Kohl's received an incoming text message, containing the term "SAVE07," from Ms. Jennings mobile phone number.
15. "SAVE07" is one of Kohl's "calls to action" that initiates the sending of text messages.
16. The following are examples of Calls to Action that featured the keyword SAVE07:





WE PROMISE TO TEXT BACK...
WITH **15% OFF!**

Text **SAVE02** to **56457** (KOHLS)
and get 15% off right now.*

17. In response to the “SAVE07” message from Ms. Jennings’ phone, within 15 minutes of receipt of that message, Kohl’s transmitted two text messages to Ms. Jennings’ phone number, stating as follows (or substantially similar thereto):

KohlsAlerts: Welcome to Kohl's Mobile Alerts! Keep up w/ Kohl's savings. Msg&Data Rates May Apply. Get 7 msgs per month. Reply HELP for HELP. STOP to cancel.

KohlsAlerts: Sign-up offer: Get 15% off at Kohls.com. Use code SMS2145 until 12/06. Terms: www.kohls.com/sms. Reply HELP for HELP STOP to cancel.

18. Kohl’s commenced sending Ms. Jennings approximately seven messages per month. The messages were identical to or substantially similar to the messages received by Ms. Winner.
19. Kohl’s never received a “STOP” message from Ms. Jennings’ phone.
20. Kohl’s ceased sending text messages to Ms. Jennings’ phone on April 4, 2016, the date on which she filed the Complaint in this action.
21. Ms. Jennings contends that she was annoyed at receiving the messages and considered them spam.

Dated: March 2, 2017

/s/ Sergei Lemberg

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Respectfully submitted,

/s/ Jeffrey S. Jacobson

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Attorneys for Defendant Kohl's Department Stores, Inc.

CERTIFICATE OF SERVICE

I, Jeffrey S. Jacobson, hereby certify that a true and correct copy of the Stipulation of Fact filed on this 2nd day of March 2017 using the Court's ECF system and is available for downloading and viewing by the following:

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/s/ Jeffrey S. Jacobson
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